

IN THE DISTRICT COURT OF THE UNITED STATES  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

UNITED STATES OF AMERICA, ) 2:11-CR-511  
)  
Plaintiff ) Charleston,  
) South Carolina  
VS ) November 6, 2014  
)  
JIAN-YUN DONG, et al, )  
)  
Defendants )

TRANSCRIPT OF TESTIMONY OF  
DR. JAN WORARATANADHARM  
BEFORE THE HONORABLE C. WESTON HOUCK,  
SENIOR UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical shorthand,  
Transcript produced by computer-aided transcription.

1 THE COURT: You can bring the jury out.

2 (Thereupon, the jury returned to the courtroom.)

3 THE COURT: Good morning, ladies and gentlemen.

4 Today is Thursday and tomorrow is Friday. And I've kind of  
5 told you what hours we run, but usually on Friday, I try to  
6 slow down just a little bit. Most of you have got some plans  
7 or some of you have got some plans, and if any of you have  
8 any special plans on Friday and you want to leave early, if  
9 you just let the CSO know about it, I'll do the best I can to  
10 accommodate it; otherwise, we'll quit a little early on  
11 Friday. But if we have to quit a little earlier than early,  
12 then we'll do that to accommodate you, okay? Next Tuesday is  
13 Veterans Day. I learned that yesterday, I wasn't aware of  
14 it, I had forgotten it. It seems like I always forget  
15 November 11, which I shouldn't, but I do. And this building  
16 will be closed, and many of you have asked the question  
17 before, I think, from what I understand, whether we'll be  
18 closing it up, and we will. We'll take it as a federal  
19 holiday. And we'll just have to wait until we get to that  
20 day and see where we are with the case. And wherever we are,  
21 we'll have to recess and come back on Wednesday.

22 THE COURT: Okay. You may proceed. I think we are  
23 at the point of your cross-examination.

24 MS. PARHAM: Thank you, Your Honor.

25 CONTINUED CROSS-EXAMINATION

1 BY MS. PARHAM:

2 Q. Good morning.

3 A. Good morning.

4 Q. Dr. Woraratanadharm, is that how you pronounce your name?

5 A. Yes. You can just call me Jan.

6 Q. Jan, okay. You worked at GenPhar since 2005?

7 A. That's correct.

8 Q. And what were your duties there?

9 A. I did a lot of writing responsibilities for the company,  
10 a lot of grant applications, some regulatory work, as well.

11 Q. And you are a scientist, as we heard your background,  
12 correct?

13 A. Yes.

14 Q. And were there other scientists that worked at GenPhar?

15 A. Yes.

16 Q. How many other scientists worked there?

17 A. Um, maybe about four or five on average.

18 Q. How many total employees were at GenPhar when you were  
19 there?

20 A. I think there was about 10.

21 Q. All right. Now, when you worked there, GenPhar was  
22 working on vaccines for which viruses?

23 A. There was E-Bola, Marburg, Dengue flu, Avian flu,  
24 Chikungunya, I think Rubella Fever.

25 Q. Now, we've heard about E-Bola because it's been in the

1 news recently, but what is Marburg? Is it kind of like  
2 E-Bola? What type of --

3 A. Yeah, it's a -- it's in the same family of viruses as the  
4 E-Bola.

5 Q. Does it also have a hemorrhagic fever component?

6 A. Yes. It has very similar symptoms.

7 Q. And have a high death rate?

8 A. Yes.

9 Q. How about the other diseases that you mentioned?

10 A. The mortality rate of those other diseases are not as  
11 severe.

12 Q. Did you have vaccines in different levels of completion  
13 for those illnesses that you named or diseases that you  
14 named?

15 A. Yes.

16 Q. So GenPhar had, in fact, formulated some type of vaccine  
17 with regard to each of those?

18 A. Yes.

19 Q. Would you tell the jury what stages of completion those  
20 were in when you were there?

21 A. Um, I would say E-Bola was the most advanced stage. It  
22 was -- when I left, we had manufactured it. GMP was an  
23 outsource to another company for manufacturing. And then  
24 Marburg was the next one in line. It was in pre-clinical  
25 development. It had not been manufactured yet. And then

1 after that Dengue was the next one. We had done a lot of  
2 studies in animals with that one.

3 Q. When you say "pre-clinical development" for Marburg, what  
4 does that mean?

5 A. It just means that we have been doing the work that is  
6 before clinical trials. So in the case of Marburg, we had  
7 done animal studies with it and we were working towards  
8 getting it into the clinic.

9 Q. And you actually had a formulated vaccine for it?

10 A. Um, yes. It was not a -- not ready to be injected in  
11 humans, but yes, we had a vaccine.

12 Q. And even once it gets to the stage of being ready to  
13 inject in humans, GenPhar did not have a facility or the  
14 capabilities to mass produce vaccines, correct?

15 A. That's correct.

16 Q. And so they would have to contract that labor out with a  
17 facility?

18 A. Yes.

19 Q. Because your quarters were pretty confining for the  
20 number of people there?

21 A. Yes. Not only the space but the actual building itself,  
22 different specifications that you need for air flow and  
23 cleanliness, things like that.

24 Q. Now, didn't GenPhar have several patents for different  
25 things with regard to these vaccines?

1 A. Um, yes. They had several patents or patent  
2 applications.

3 Q. And wasn't one of those of most significance the fact  
4 that they were able to take a gene off of the common cold and  
5 kind of insert the virus into it, or something like -- I  
6 might not be explaining it right.

7 A. Yeah, it's I guess flipped, but yeah.

8 Q. Okay. So would you explain that to the jury?

9 A. Yeah. So there is -- there is a virus that causes  
10 symptoms that are similar to the common cold called  
11 Adenovirus. And that was the basis of most of them,  
12 actually, pretty much all of the technology at GenPhar. So  
13 the patent was that we were able to take genes from other  
14 viruses and put it into the Adenovirus and use that to  
15 develop different vaccines.

16 Q. And was GenPhar, in fact -- well, let me ask you this:  
17 Were other companies in the United States trying to work on  
18 that same type of kind of scientific philosophy?

19 A. Yes.

20 Q. But was GenPhar the only company that was able to  
21 actually move two of the genes?

22 A. Right. What was unique about GenPhar's technology is we  
23 could insert genes on two different sides of the genome, of  
24 the DNA sequence.

25 Q. And you were the only company that was able to do that?

1 A. That I'm aware of, yes.

2 Q. So with regard to your vaccines, you -- if you had,  
3 say -- which two are the most progressed? It would be E-Bola  
4 and Marburg?

5 A. Yes.

6 Q. Now, when you were writing these grant applications, who  
7 would provide the sum for the application?

8 A. Dr. Dong.

9 Q. Would you also write some of the science or pull it from  
10 different --

11 A. Yes.

12 Q. And would the other scientists contribute, as well?

13 A. Yes.

14 Q. All right. And who did you receive the budget  
15 information from with regard to the grants that you wrote?

16 A. Um, it was kind of a combination of Dr. Dong and Dr.  
17 Wang.

18 Q. All right. Do you recall agents, federal agents,  
19 interviewing you on January 12th, 2010?

20 A. 2010? Um, I don't remember the date, but yeah, I was  
21 interviewed by them.

22 Q. Okay. Do you recall telling the agents that you received  
23 budget information for the grant proposals from Dr. Wang?

24 A. Um, probably.

25 Q. Okay. And do you also recall telling them that personnel

1 levels were provided for by Dr. Dong or Dr. Wang?

2 A. Yes.

3 Q. All right. Now, you know, the Government was asking you  
4 about this 80 percent of your work and how much time you  
5 spent on these different projects. You said that Dr. Wang  
6 advised you to charge 60 percent of your time to Marburg and  
7 40 percent of your time to E-Bola; is that correct?

8 A. Um, I don't know if the 40 percent was for E-Bola, but it  
9 was --

10 Q. Dengue. I'm sorry.

11 A. Yeah.

12 Q. She was the one that told you to charge like that; is  
13 that right?

14 A. That's right.

15 Q. Now, in essence or reality, what percentage of time do  
16 you think you were spending on those projects?

17 A. Um, I would say, you know, since I was working about 80  
18 percent of my time on grant applications, about 20 percent of  
19 it would be spent on other things.

20 Q. Okay. Going back to this interview that you gave the  
21 agent back in January of 2010, could you have told agents  
22 that it was 60 percent rather than 80 percent that you were  
23 working on the grant applications and business plans?

24 A. I don't recall. I don't remember.

25 Q. Okay.



1 A. Yeah.

2 MS. PARHAM: May I approach the witness? Your  
3 Honor, may I approach the witness?

4 THE COURT: Sure.

5 Q. If you will read that sentence right there and see if  
6 that refreshes your memory.

7 MR. KLUMB: I object, Your Honor, to her reading it  
8 out loud.

9 THE COURT: Say what now?

10 MR. KLUMB: I object to her reading it out loud.  
11 If she's trying to refresh her recollection, she should not  
12 read it to the jury.

13 Q. Please read it to yourself.

14 A. Oh, okay.

15 Q. Does it appear you told the agents that you spent 60  
16 percent rather than 80 percent?

17 MR. KLUMB: I object. She's trying to refresh her  
18 recollection.

19 Q. Does this refresh your recollection with regard to what  
20 you told the agents?

21 A. I suppose so.

22 Q. What did you tell the agents regarding the percentage of  
23 your work that you spent writing the proposals?

24 A. I guess according to this statement I said 60 percent at  
25 that time.

1 THE COURT: She's asking you about your knowledge,  
2 your recollection of what you told them.

3 THE WITNESS: Yeah, I don't remember.

4 THE COURT: She showed you some document --

5 THE WITNESS: Um-hum.

6 THE COURT: -- that has supposedly --

7 THE WITNESS: Um-hum.

8 THE COURT: -- might refresh your memory.

9 THE WITNESS: Right.

10 THE COURT: Whether it does or not, that's between  
11 you and that document. Now, we are talking about what your  
12 memory is after you read that document; not what that  
13 document says.

14 THE WITNESS: Okay.

15 THE COURT: So she's asking you do you recall what  
16 you told the agents.

17 THE WITNESS: I don't recall saying that.

18 THE COURT: Okay. The procedure normally is that if  
19 you want to refresh a witness's recollection, the documents  
20 you use should be submitted to the other side and it should  
21 be determined whether it's an appropriate document for the  
22 purpose of refreshing her recollection. Now, we haven't done  
23 that in this case, but just in case it comes up again, that's  
24 the procedure that the Rules of Evidence dictate.

25 MS. PARHAM: Yes, sir. I received this from the

1 Government.

2 THE COURT: I don't care who you received it from,  
3 the procedure is as I just stated.

4 MS. PARHAM: Yes, sir. Thank you.

5 Q. Now, when you filled out these grant applications, were  
6 they projected for the work that you were going to do in the  
7 following years?

8 A. Yes.

9 Q. So they are not saying that you've done the work; they  
10 are saying, This is what we project and this is what we  
11 believe the research, the path that we are going to take?

12 A. That's correct.

13 Q. Now, when you did those proposals, oftentimes would the  
14 actual hours that were worked change after the following  
15 year?

16 A. Yes.

17 Q. And would that have been in these progress reports that  
18 were submitted?

19 A. That's correct.

20 Q. And how did you get the calendar months for the progress  
21 reports that were submitted?

22 A. I got that information from Dr. Wang.

23 Q. Okay. Now, let me show you what's been admitted into  
24 evidence Government's Exhibit 1, page 5. I believe the  
25 Government showed you this. Is this the estimation and the

1 grant proposal of the time that you believed or that was  
2 submitted for work during the first year of the grant?

3 A. Yes.

4 Q. And then in Government's Exhibit 2, is this, the last  
5 page of the progress report, for the following year which  
6 talks about what was actually completed?

7 A. That's correct.

8 Q. All right. And this is the page in which you said that  
9 you probably did not work 7.2 calendar months?

10 A. That's right.

11 Q. And what do you think would have been an accurate number?

12 A. Um, probably more like 10 percent of my time. So  
13 whatever that is. Ten divided -- um, 1.2.

14 Q. Okay. And I believe you testified earlier that you do  
15 think Holman's is accurate with regard to the time he spent?

16 A. I'm not sure.

17 Q. Was the science that was put into these progress reports,  
18 did you read the science portions before they were submitted  
19 in the progress reports?

20 A. Yes.

21 Q. And did you agree with the studies and the results of  
22 that science?

23 A. Um, I wrote what Dr. Dong told me to write.

24 Q. Okay. But you are a scientist?

25 A. I am.

1 Q. And you know what's going on at the GenPhar facility?

2 A. Yes.

3 Q. And did this coincide with the work that you were, in  
4 fact, doing at the GenPhar facility?

5 A. Um, there was one thing I think in that progress report I  
6 might need to take a look at it, but I think we were  
7 reporting about a toxicology study. That may have been a  
8 little misleading in the way it was written.

9 Q. What about the other progress reports, did you read the  
10 science that was associated with those?

11 A. Yes.

12 Q. All right. And were you, in fact, progressing with  
13 regard to this Marburg vaccine that is discussed in progress  
14 reports?

15 A. I believe some progress was being made, yeah.

16 Q. Now, with regard to the NIH funding, would it not be  
17 unusual to apply for multiple grants at the same time because  
18 you don't know which ones you are going to get?

19 A. That's true.

20 Q. In fact, what percentage are actually awarded?

21 A. I'm not sure.

22 Q. Do you recall telling agents it would have been around 10  
23 percent?

24 A. That sounds about right.

25 Q. All right. And so when you submit these applications,

1 you don't know which ones you are going to get and which ones  
2 you are not going to get?

3 A. That's right.

4 Q. And so there is actually -- and when you submit an  
5 application, you tell the Government the other applications  
6 that you have applied for?

7 A. Um, yeah. Yeah.

8 Q. And you say on the side of them whether they are active  
9 or they are pending?

10 A. Yes.

11 Q. And so the Government has in its possession the different  
12 grants that an agency has applied for and so they can go look  
13 at the hours and see if they add up to more than 100 percent?

14 MR. KLUMB: I object to the form of the question.  
15 It's compound. Compound.

16 THE COURT: I don't know what you mean by that.  
17 I've never heard that objection. Tell me what that means.

18 MR. KLUMB: It's -- there were multiple questions  
19 asked in the same question.

20 THE COURT: All right. Ms. Parham?

21 MS. PARHAM: I'll restructure the question.

22 Q. On these grant applications, is there a section where you  
23 discussed what other grants that your company has applied  
24 for?

25 A. Yes, there is.

1 Q. And do you tell whether they are pending applications or  
2 they are active applications?

3 A. Yes, we do.

4 Q. And so the Government would have the ability -- or would  
5 the Government have these other applications so that they can  
6 tell if you over dedicated personnel hours --

7 A. Yes.

8 Q. -- for example? And in fact they do look at that in the  
9 amendments to these applications; isn't that correct?

10 A. Who is "they"?

11 Q. The Government.

12 A. Oh, um, yes.

13 Q. Let me show you page 41 of Government's Exhibit 1. So  
14 would this be an example where it says right here,  
15 overcommitted 110 percent?

16 A. That's right.

17 Q. So it's no secret to the Government what grants people  
18 have applied for and how hours might be overcommitted because  
19 you don't know which ones you are going to get?

20 A. Yes. Can I clarify one thing, though?

21 Q. Yes. Uh-huh.

22 A. So this document -- this portion of the document that you  
23 are showing --

24 Q. Uh-huh.

25 A. -- shows the active and pending support for the higher

1 level personnel, but it doesn't show everybody.

2 Q. Right.

3 A. Yeah.

4 Q. And with regard to these grants, did you ever read the  
5 NIH Guidelines?

6 A. Um, I've read the instructions for the grant proposals.  
7 I'm not sure what you mean by the "NIH Guidelines."

8 Q. Well, did you read any of the federal regulations or  
9 anything like that in preparation for these grants?

10 A. No, I did not.

11 Q. Did you take any grant writing courses or go to any  
12 classes for it to learn how to do it?

13 A. No, I did not.

14 Q. Now, you testified on direct about a search warrant being  
15 executed by the federal agents. Was that in or about July of  
16 2009?

17 A. I don't remember the date, but that sounds about right.

18 Q. Do you recall telling agents that the way you accounted  
19 for your time changed after the search warrants were  
20 executed?

21 A. Um, yes.

22 Q. All right. And was it at the time of the search warrant  
23 that you recalled my client, Dr. Dong, saying that he thought  
24 he could use the indirect costs for a facility?

25 MR. KLUMB: Objection, hearsay.



1 THE COURT: Say what?

2 MR. KLUMB: Objection, hearsay.

3 MS. PARHAM: I believe she testified to it on  
4 direct. I was just clarifying what the timeframe was that he  
5 said that.

6 THE COURT: It seems to me that it is hearsay. It's  
7 not any exception to the hearsay rule because he is a party  
8 and he is your client. If it's an adverse party, it's a  
9 different rule under 801, but it seems to me it's hearsay,  
10 unless I'm told for some other reason it's offered for the  
11 truth of the matter; and therefore, it's objectionable and I  
12 sustain the objection.

13 MS. PARHAM: Thank you, Your Honor.

14 Q. Do you recall the timeframe that he told you that  
15 statement that you testified to on direct?

16 A. I believe it was after the search warrant.

17 Q. Now, who was in charge of the finances of the --

18 THE COURT: Now, are you testifying that you made  
19 that statement on direct examination? Now, what she's asking  
20 you about is some statement that her client, Dr. Dong,  
21 allegedly made. And I don't want to get too complicated, but  
22 if you made that statement on direct examination --

23 THE WITNESS: Yes.

24 THE COURT: -- upon being questioned by the U.S.  
25 Attorney --

1 THE WITNESS: Um-hum.

2 THE COURT: -- then it's not objectionable as  
3 hearsay, okay? If you didn't make the statement on direct  
4 examination and you are now being asked to make it by Dr.  
5 Dong's attorney, it is covered by the hearsay rule and  
6 objectionable. And that's why the difference is important.  
7 And we need to know and the jury should know whether you made  
8 that statement on direct examination or not.

9 Yes, sir?

10 MR. KLUMB: My recollection is that it was a  
11 different statement.

12 THE COURT: Well, your recollection -- I wish you  
13 would disregard his recollection; it's your recollection that  
14 counts. And we would like to find out if it's important. We  
15 can go look at the record at some recess, but if we are going  
16 to talk about that statement, I think if any of you will take  
17 the time to peruse Rule 801, you will see the difference. If  
18 he brings it out as opposed to you bringing it out in one  
19 instance, it's hearsay and the other it's not. And so if  
20 it's going to be important and it's going to be something you  
21 dwell on, something you discuss, then I think we need to  
22 determine whether the statement is something that is  
23 admissible and is something that the jury can consider.

24 And since you are the one who wants to do that, I'll  
25 leave it up to you to see if you can find it in the record

1 where it was presented at an earlier time.

2 MS. PARHAM: Yes, sir. Thank you. So we would  
3 just wait and do that at the break, Your Honor?

4 THE COURT: I don't know what to say about it,  
5 because in the one instance, it becomes a statement by a  
6 party, which takes it out of hearsay, and that's when the  
7 Government asked it. And then in another instance, it  
8 becomes a declaration against -- I mean, it just -- it's in  
9 and out of the Rule 801, and it depends on who asked the  
10 question and who brought it out. The Government has a  
11 perfect right to bring out statements made by the defendant;  
12 you don't have that right --

13 MS. PARHAM: Right.

14 THE COURT: -- under the hearsay as far as you are  
15 concerned under the Rules of Evidence. So let's just -- we  
16 just won't deal with that. She doesn't recall what she did.  
17 If she can -- if she can recall it, then fine, maybe we can  
18 go back and dig it up.

19 MS. PARHAM: May I ask her that question?

20 THE COURT: Sure.

21 Q. Do you recall making any -- that statement on direct  
22 examination when asked by the Government?

23 MR. KLUMB: Again, I just object to the use of --  
24 the question is vague. "That statement" refers to what?

25 MS. PARHAM: I'm trying not to say the content of

1 the statement because he objected to that too.

2 THE COURT: I don't see anything wrong with her  
3 question. She's got to start somewhere.

4 A. Um, I -- I don't remember exactly what you said was my  
5 statement.

6 Q. Do you recall -- do you recall making a statement on  
7 direct examination about what Dr. Dong said about the  
8 facility indirect costs after the search warrant? Do you  
9 recall being asked that on direct examination?

10 A. Um, it was a slightly different question, I think.

11 MS. PARHAM: Your Honor, we'll pull it up on the  
12 record. I think that's the easiest way.

13 THE COURT: Okay.

14 Q. When you would get your grant monies in, who was in  
15 charge of the bookkeeping of the awards and the finances of  
16 the awards after grant money came in?

17 A. Um, there -- we had some -- some staff that were involved  
18 with the finance area. And I think it was, um, depending on  
19 what timeframe, there was -- well, Danher Wang, Debbie Owens  
20 and Elaine Van Voris, I think were in charge.

21 Q. Do you recall making a statement to investigators in  
22 January 2010 regarding the fact that you didn't feel like it  
23 was intentional as to GenPhar employees showing more than 100  
24 percent work level on these applications?

25 A. Um, that sounds possible.

1 Q. What do you recall telling them about that?

2 A. I don't remember what I said specifically.

3 Q. Do you recall saying that it was to try to fund people's  
4 salary and not people just doing the research and that you --

5 THE COURT: Yes, sir?

6 MR. KLUMB: I object. She's reading from the  
7 document. Not the proper way to refresh.

8 MS. PARHAM: May I approach the witness, Your  
9 Honor?

10 THE COURT: Say what?

11 MS. PARHAM: I'll strike that. May I approach the  
12 witness?

13 THE COURT: Well, you know, the inference before the  
14 jury with the document and the questions I think is  
15 inappropriate. She's already said she doesn't recall what  
16 she told them. And now to read from some document to infer  
17 that's what she said she told them, and that's requiring or  
18 asking the jury to make a leap that they shouldn't. If she  
19 told somebody that, they ought to be able to come in here and  
20 say what she told them. Until they do that, it's mere  
21 speculation what, if anything, she told anybody.

22 MS. PARHAM: May I approach the witness, Your  
23 Honor?

24 THE COURT: You sure may.

25 Q. Let me have you read that last paragraph to yourself.

1 MR. KLUMB: Counsel, could I have a page, please?

2 MS. PARHAM: Restricted discovery page 176.

3 MR. KLUMB: Thank you.

4 A. Okay.

5 Q. Does that refresh your recollection as to what you may or  
6 may not have told agents?

7 A. Yes.

8 Q. Do you remember saying that to the agents?

9 A. Yes.

10 Q. And what did you tell the agents, to the best of your  
11 knowledge? Not from what you are reading, but what do you  
12 remember telling them about that?

13 A. That, um, that we were -- we were just submitting -- we  
14 were trying to get all the personnel funded so it didn't  
15 always total up to 100 percent. It might have exceeded that.

16 Q. And what do you recall saying about conduct being  
17 unintentional?

18 A. Um, that it might not have been intentional.

19 Q. And with whom were you -- who were you talking about when  
20 you said it was unintentional? The employees?

21 A. Um, I think Dr. Dong.

22 Q. All right. And you recall telling agents that in January  
23 of 2010?

24 A. Yes.

25 Q. Let me show you what's been marked for identification

1 purposes only as Defendant's Exhibits 8 through 47, which  
2 have been shown to the Government. Can you look at those and  
3 tell me if you can identify what's in those photographs?

4 A. It looks like the laboratory --

5 Q. Just. Can you identify what's in --

6 A. -- GenPhar.

7 Q. Can you identify what's depicted in each of those  
8 photographs?

9 A. Oh, you want me to go through each one of them?

10 Q. Well, not out -- just see if you recognize what's  
11 depicted in those photographs.

12 A. Yes. Okay.

13 Q. After looking at those photographs, do you believe that  
14 they fairly and accurately depict what you recognize them to  
15 be?

16 A. Um, I think so. It's been a while.

17 MS. PARHAM: Your Honor, we would offer Defendant's  
18 Exhibits 8 through 47.

19 MR. KLUMB: Well, I would object. I don't believe  
20 the witness has indicated it's a fair and accurate  
21 representation of, what, I'm not sure.

22 THE COURT: I haven't seen the exhibits. Okay. I  
23 need to look at them. I don't know what they are.

24 You asked her: "Can you look at those photographs  
25 and tell me what they are?"

1 "It looks like the laboratory."

2 "Can you identify what's in" --

3 "Answer. GenPhar."

4 "Can you identify what's depicted in each of these  
5 photographs?"

6 "You want me to go through each one of them?"

7 "Well not out -- just see if you recognize what's  
8 depicted in these photographs."

9 "Yes. Okay."

10 "Okay. After looking at these photographs, do you  
11 believe that they fairly and accurately depict what you  
12 recognize them to be?"

13 "I think so. It's been a while."

14 I don't think that's a proper foundation.

15 MS. PARHAM: I didn't realize they were going to be  
16 objected to. I'll go through each one individually.

17 THE COURT: Well, I mean if this -- if this is  
18 GenPhar and they are pictures in GenPhar, you ought to get  
19 that. We don't need to waste the time of the Court or the  
20 jury in arguing about it. But when you offer a photograph  
21 in -- gosh, I guess when I started practicing law, it  
22 involved skid marks on a highway when two cars ran together  
23 and, Does that accurately represent the scene when you went  
24 there and photographed it? Yes, it does. But you've  
25 identified the scene and then you identify the photographs.



1 Here she says she didn't do any of that. And I don't  
2 question the authenticity, but I don't think that they have  
3 done what they should have done.

4 Yes, sir?

5 MR. KLUMB: Your Honor, I will withdraw the  
6 objection if we have some testimony as to the timeframe that  
7 this is supposed to represent.

8 THE COURT: Well, you know, you've got investigators  
9 been hanging out over there for years, haven't you?

10 MR. KLUMB: Um, I think if counsel could -- counsel  
11 can tell you when those photographs were taken.

12 THE COURT: They could see this through the window.  
13 They wouldn't even have to go inside. But I mean, do you  
14 have anybody that knows what it looked like inside of  
15 GenPhar? First of all.

16 MR. KLUMB: At certain periods of time, like when  
17 the search warrant was executed.

18 THE COURT: Show him the photographs and see if  
19 you've got any objection.

20 MR. KLUMB: I've seen the photographs. I think the  
21 witness should be asked what timeframe this is supposed to be  
22 a fair and accurate representation of.

23 THE COURT: Do you know when those photographs were  
24 taken?

25 THE WITNESS: I don't know.

1 THE COURT: Is there a date on them?

2 MS. PARHAM: No, sir, there is not.

3 THE WITNESS: I'm not sure if I recognize some of  
4 the equipment, so it may have been after I left.

5 MS. PARHAM: I'll go through each one individually.

6 THE COURT: I don't know if she's going to be able  
7 to identify them. I mean, she can't tie down a time, and I  
8 don't know for the life of me why time is that important.  
9 But I do know from the testimony that they made at least one  
10 move, they have been in at least two offices, and they have  
11 built a new office.

12 Now, the record doesn't indicate what happened to  
13 that third location, so we don't really know what we are  
14 talking about. And so if time doesn't tie it down, location  
15 doesn't tie it down and identification of where it is in the  
16 building isn't tied down, I don't see how we are going to get  
17 it in.

18 MS. PARHAM: May I go through each of the  
19 photographs?

20 THE COURT: If she can do that.

21 Q. Let me show you what's been marked as Defendant's Exhibit

22 8. Do you recognize what's in that photograph?

23 A. Yes. That's the reception area.

24 Q. Is that how it looked when you worked there?

25 A. Yeah, approximately.

1 Q. Okay.

2 MS. PARHAM: We would offer Defendant's Exhibit 8.

3 MR. KLUMB: No objection.

4 (Thereupon, Defendant's Exhibit Number 8 was  
5 received in evidence.)

6 Q. Let me show you Defendant's Exhibit 9. Can you identify  
7 that photograph?

8 A. I believe it's one of the labs, but I don't really  
9 recognize it. It's been kind of a long time.

10 Q. Okay. So you don't recognize that?

11 THE COURT: She said: "I believe it's one of the  
12 labs, but I don't really recognize it."

13 MS. PARHAM: All right.

14 Q. Defense Exhibit 10. Can you recognize that one?

15 A. Yeah, I recognize the equipment.

16 Q. Was that there when you worked there?

17 A. I think so, but I didn't work directly with -- in the  
18 lab, so I don't remember all of the equipment that we had.

19 MS. PARHAM: We would offer Defense Exhibit 10.

20 MR. KLUMB: May I see it, Counsel? Thank you.

21 Given the witness's answer, I have no objection.

22 (Thereupon, Defendant's Exhibit Number 10 was  
23 received in evidence.)

24 Q. That's Exhibit 11. Do you recognize what's in that  
25 photograph?

1 A. No, I don't.

2 Q. Defendant's Exhibit 12?

3 A. Yes.

4 MS. PARHAM: We would offer Defense Exhibit 12

5 MR. KLUMB: No objection.

6 THE COURT: Any objection?

7 MR. KLUMB: No objection.

8 (Thereupon, Defendant's Exhibit Number 12 was  
9 received in evidence.)

10 Q. Defense exhibit 13. Do you recognize that?

11 A. Yes.

12 MS. PARHAM: We would offer Defense Exhibit 13.

13 MR. KLUMB: No objection.

14 (Thereupon, Defendant's Exhibit Number 13 was  
15 received in evidence.)

16 Q. Defense Exhibit 14. Do you recognize what's in that  
17 photograph?

18 A. I'm trying to remember if we had that, um, I think  
19 that's -- yes.

20 MR. KLUMB: I'm sorry, I didn't hear the answer.

21 THE WITNESS: I'm sorry. Yes.

22 Q. You believe that fairly and accurately represents --

23 A. Um --

24 Q. -- the way it looked when you were there?

25 A. I feel like it might have been a different room because I

1 don't really remember the arrangement, but...

2 Q. We'll not offer that one.

3 Defense exhibit 15. Can you identify that?

4 A. Yes.

5 Q. Does that fairly and accurately represent the way it  
6 looked when you were there?

7 A. Yes.

8 Q. Defense Exhibit 16.

9 A. Yes.

10 Q. Does that fairly and accurately depict the way it looked  
11 when you were there?

12 A. Yes.

13 Q. Defense Exhibit 17.

14 A. I don't recall this one.

15 Q. Okay. Defense Exhibit 18.

16 A. Oh, wait a second. Sorry. No, um, 18 -- oh, yes.

17 Q. And does that fairly and accurately represent what you  
18 believe --

19 A. Yes.

20 Q. Defense Exhibit 19.

21 A. Yes.

22 Q. Does that fairly and accurately represent the way it  
23 looked when you were there?

24 A. Yes.

25 Q. Defendant's Exhibit 20.

1 A. Okay. Yes.

2 Q. Does that fairly and accurately represent the way it  
3 looked when you were there?

4 A. Um, a few things are moved around, but for the most part  
5 it's the same.

6 Q. Defense Exhibit 21.

7 A. I don't remember this one.

8 Q. Defense Exhibit 22.

9 A. Yes.

10 Q. Does that fairly and accurately represent the way it  
11 looked when you were there?

12 A. Yes.

13 Q. Defense Exhibit 23.

14 A. Yes.

15 Q. Does that fairly and accurately represent the way it  
16 looked when you were there?

17 A. Yes.

18 Q. Defense Exhibit 24.

19 A. Yes.

20 Q. Does that fairly and accurately represent the way it  
21 looked when you were there?

22 A. Yes.

23 Q. Defense Exhibit 25.

24 A. Yes.

25 Q. Does that look like it did when you were there?

1 A. Yes.

2 Q. Defense Exhibit 26.

3 A. Um, I don't recall that one.

4 Q. Okay. Defense Exhibit 27.

5 A. Yes.

6 Q. Does that look like it did when you were there?

7 A. Yes.

8 Q. Defense Exhibit 28.

9 A. Yes.

10 Q. Does that look like it did when you worked there?

11 A. Yes.

12 Q. Defense Exhibit 29.

13 A. Yes.

14 Q. Does that look like it did when you worked there?

15 A. Yes.

16 Q. Defense Exhibit 30.

17 A. Yes.

18 Q. Does that look like it did when you worked there?

19 A. Yes.

20 Q. Defense Exhibit 31.

21 A. Yes.

22 Q. Does that look like it did when you worked there?

23 A. Yes.

24 Q. Defense Exhibit 32.

25 A. I don't recognize that one.

1 Q. Defense Exhibit 33.

2 A. Um, I don't recognize that one.

3 Q. Defense Exhibit 34.

4 A. Yes.

5 Q. Does that look like it did when you worked there?

6 A. Yes.

7 Q. Defense Exhibit 35.

8 A. Um, yes.

9 Q. That looks like it did when you worked there?

10 A. Yes.

11 Q. Defense Exhibit 36.

12 A. Yes.

13 Q. Does that look like it did when you worked there?

14 A. Yes.

15 Q. Defense Exhibit 37.

16 A. Yes.

17 Q. Does it look like it did when you worked there?

18 A. Yes.

19 Q. Defense Exhibit 38.

20 A. Yes.

21 Q. Does it look like it did when you worked there?

22 A. Yes.

23 Q. Defense Exhibit 39.

24 A. Yes.

25 Q. Does it look like it did when you worked there?



1 A. Yes.

2 Q. Defense Exhibit 40.

3 A. Yes.

4 Q. Does it look like it did when you worked there?

5 A. Yes.

6 Q. Defense Exhibit 41.

7 A. I don't recognize.

8 Q. Defense Exhibit 42.

9 A. Yes.

10 Q. Does it look like it did when you worked there?

11 A. Yes.

12 Q. Defense Exhibit 43.

13 A. I don't recognize that.

14 Q. Defense Exhibit 44.

15 A. Yes.

16 Q. Does that look like it did when you worked there?

17 A. Yes.

18 Q. Defense Exhibit 45.

19 A. Yes.

20 Q. That looks like it did when you worked there?

21 A. Yes.

22 Q. Defense Exhibit 46.

23 A. I don't recognize that one.

24 Q. Defense Exhibit 47.

25 A. I don't recognize that one.

1 MS. PARHAM: Based on her answers, Your Honor, we  
2 would offer Defendant's Exhibits 8, 10, 12, 13, 15, 16, 18,  
3 19, 20, 22, 23, 24, 25, 27, 28, 29, 30, 31, 34, 35, 36, 37,  
4 38, 39, 40, 42, 44 and 45.

5 MR. KLUMB: No objection.

6 THE COURT: Without objection.

7 (Thereupon, Defendant's Exhibit Numbers 8, 10, 12,  
8 13, 15, 16, 18, 19, 20, 22, 23, 24, 25, 27, 28, 29, 30, 31,  
9 34, 35, 36, 37, 38, 39, 40, 42, 44 and 45 were received in  
10 evidence.)

11 Q. You testified on direct that you were in one office  
12 location and then moved to a second location.

13 A. That's right.

14 Q. Are these photographs of the first or second location  
15 that you testified to on direct?

16 A. The second location.

17 Q. And these are pictures of the last place you worked  
18 basically?

19 A. At GenPhar, yes.

20 Q. Is this where the search warrant was executed?

21 A. Yes.

22 Q. Let me show you Defense Exhibit 8. What's that a picture  
23 of?

24 A. That's the reception area.

25 Q. All right. Defense Exhibit 10. What is that a

1 photograph of?

2 A. Some of the lab equipment.

3 Q. All right. What is that depicted right there?

4 A. It looks like the wave bioreactor.

5 Q. Do you recall testifying on direct that y'all had a  
6 5-liter bioreactor?

7 A. I recall that it was a small version. I didn't know what  
8 size exactly. But yeah, that's the one.

9 Q. Do you recall testifying on direct that you had a 5-liter  
10 bioreactor?

11 A. I think I said 10, but I wasn't sure of the size.

12 Q. Okay. Do you know that that -- do you know whether  
13 that's a 5-liter bioreactor or not?

14 A. I don't know.

15 Q. All right. Defense Exhibit 12.

16 A. Yeah. That's a piece of equipment there.

17 Q. What is that equipment for?

18 A. That's for chromatography.

19 Q. Okay. What is that called, that piece of equipment? If  
20 you know.

21 A. FPLC.

22 Q. And FPLC --

23 A. Yeah. I mean, the -- technically that one is an active  
24 purifier, but it's in the same family.

25 Q. All right.

1 A. That's a wave bioreactor.

2 Q. Is that a 50-liter bioreactor?

3 A. Um, I don't think so.

4 Q. What do you believe that to be?

5 A. A small one. So I would guess 5 or 10.

6 Q. Defendant's Exhibit 15. What is that a photograph of?

7 A. Can you flip it?

8 Q. I'm sorry.

9 A. I think that's the robot that they had.

10 Q. What is that used for?

11 A. Um, that was for their HIV diagnostics project.

12 Q. Defense Exhibit 16.

13 A. Do you want me to identify it?

14 Q. Yes.

15 A. That's a doc system, documentation system.

16 Q. Defense 18.

17 A. That's the office where I worked.

18 Q. Defense 19.

19 A. That's an area where we had all the printers and the  
20 scanner.

21 Q. Defendant's 20.

22 A. That was the office where I worked.

23 Q. Defendant's 22.

24 A. This is a tissue culture lab.

25 Q. And what is done in a tissue culture lab?

1 A. That's where you grow cells and viruses.

2 Q. Defendant's 23.

3 A. I think that's the same room.

4 Q. Defendant's 24.

5 A. That's our minus 80 freezer.

6 Q. And what's done with that?

7 A. That's where you store items under deep freeze.

8 Q. Defendant's Exhibit 25.

9 A. That's an ultra centrifuge.

10 Q. 27.

11 A. It looks like more items in the tissue culture area.

12 Q. 28.

13 A. Break room.

14 Q. 29.

15 A. Book shelf with some of our reference materials.

16 Q. 30.

17 A. More of the tissue culture room.

18 Q. 31.

19 A. I think that's the animal facility, but it's hard to  
20 tell.

21 Q. 34.

22 A. Some of the equipment in the lab.

23 Q. Defense Exhibit 35.

24 A. More laboratory equipment, the biology stuff.

25 Q. Defendant's Exhibit 36.

1 A. I think that's still the tissue culture room.

2 Q. Defense Exhibit 37.

3 A. More tissue culture incubators for tissue culture.

4 Q. That's Defense Exhibit 38.

5 Defense Exhibit 39.

6 A. Some equipment and the tissue culture room.

7 Q. Defendant's Exhibit 40.

8 A. This is the main laboratory.

9 Q. Defendant's Exhibit 42.

10 A. A shelf with chemicals.

11 Q. Defense Exhibit 44.

12 A. Some small equipment in the main lab.

13 Q. Defense Exhibit 45.

14 A. More equipment.

15 Q. Are you aware -- do you know which of this equipment was  
16 purchased with grant money and which wasn't purchased with  
17 grant money?

18 A. I do not know.

19 Q. Are you aware of whether GenPhar had investor money?

20 A. Yes, it did.

21 Q. All right. Do you know how much investor money they had?

22 MR. KLUMB: Objection as to time.

23 THE COURT: I'm sorry, I couldn't hear you.

24 MR. KLUMB: I object as to no time specified.

25 THE COURT: I'll rule -- I don't know whether it

1 makes any difference what time is involved. She's talking  
2 about the time that she was there and the time she had  
3 knowledge. If an investor came in in the middle of the deal  
4 or the beginning or the end, I don't know that that makes any  
5 difference, but I don't know that she can answer the  
6 question. She hasn't said she could so far.

7 Are you aware of who the investors were and how much  
8 they contributed?

9 THE WITNESS: I'm aware of some of the investors,  
10 but I don't know how much they contributed.

11 THE COURT: Go ahead.

12 MS. PARHAM: Thank you.

13 Q. Do you have any idea of the total dollar amount of  
14 investor money?

15 A. No.

16 Q. In February of 2013 do you recall entering into what's  
17 called a proffer agreement with the Government?

18 A. Yes.

19 Q. What's your understanding of that agreement that you  
20 entered into with the Government?

21 THE COURT: Doesn't it speak for itself?

22 MS. PARHAM: Yes, sir, it does. We'll just offer  
23 it as Defense Exhibit 48.

24 MR. KLUMB: No objection.

25 THE COURT: Was she represented by a lawyer at that

1 time?

2 MR. KLUMB: No, Your Honor.

3 MS. PARHAM: There may be --

4 THE COURT: You can publish any part of it you want  
5 to and I suggest you do that now.

6 MS. PARHAM: Let me get a clean copy. I believe  
7 there is a mark on the last page of this.

8 THE COURT: Okay. You can go ahead and publish what  
9 you want to and then we can clean it up and put the clean  
10 copy in at the first break.

11 MS. PARHAM: Thank you. I received one.

12 Q. Did you sign this on February 25th, 2013?

13 A. Yes, I did.

14 Q. Is that your signature?

15 A. Yes.

16 Q. Does the fourth paragraph discuss what you are agreeing  
17 to with the Government, that you agree to be fully truthful  
18 and forthright with the U.S. Attorney's Office and federal  
19 law enforcement?

20 A. Yes.

21 MS. PARHAM: Your Honor, I don't believe I can  
22 publish the second page. I think there is some --

23 THE COURT: Do they agree in there, the Government  
24 agree in there they are not going to prosecute her?

25 MS. PARHAM: No, Your Honor. They agree not to use



1 the information against her in a prosecution as long as she's  
2 truthful. But there is a portion of the second page that's  
3 required to be redacted, so I can't publish the second page.

4 THE COURT: I mean, the purpose of the proffer  
5 was -- it had a purpose. What was the purpose? She says her  
6 obligation was to testify truthfully.

7 Now, what was the Government to give her in return?

8 MS. PARHAM: Not to use her information against  
9 her.

10 THE COURT: Not to what?

11 MS. PARHAM: Not to use her information against  
12 her.

13 THE COURT: Okay. It looks like they might have  
14 gotten the best deal.

15 Is that your understanding of it, Mr. U.S. Attorney?

16 MR. KLUMB: It is, Your Honor.

17 THE COURT: So you retain the right to prosecute  
18 her, but you just couldn't use her testimony against her; is  
19 that correct?

20 MR. KLUMB: That's correct.

21 THE COURT: But she has not been prosecuted yet?

22 MR. KLUMB: That is correct.

23 THE COURT: Okay. So they entered into an agreement  
24 where she agreed to tell them everything she knew and to be  
25 perfectly truthful and they said that the information she

1 gave them, they would not use that to prosecute her. Now,  
2 they got other information that they could use, but what she  
3 gave them, they would not use that against her. And I'm sure  
4 that most of these agreements contain in there a provision  
5 that they can give her a polygraph test to make sure that she  
6 is fulfilling the agreement and telling the truth.

7 Is that correct, Ms. Parham?

8 MS. PARHAM: Um --

9 THE COURT: Or that's not in there?

10 MS. PARHAM: No, it is in here, Your Honor. But  
11 may we approach side bar, Your Honor?

12 THE COURT: Say what?

13 MS. PARHAM: May we approach?

14 THE COURT: Um-hum. Come around here, if you  
15 would. (At the bench.)

16 MR. KLUMB: We are not allowed to talk about the  
17 polygraph in front of the jury.

18 THE COURT: She can't -- if a polygraph was done, I  
19 don't think we can bring that out. If that was in the  
20 agreement, they might could bring it out, that has some  
21 effect on whether it's in there, exercised or not, and it  
22 seems to me that that's to create -- I mean --

23 MS. PARHAM: I would ask for a mistrial based on  
24 that, talking about it in front of the jury.

25 THE COURT: You what now?

1 MS. PARHAM: I will ask for a mistrial, that being  
2 discussed in front of the jury, because I think it implies  
3 that they did and they didn't do one.

4 THE COURT: Well, tell them they didn't do one, if  
5 that makes you feel better.

6 MR. WILLIAMS: Judge, I think it's better just to  
7 strike all references and instruct the jury not to --

8 THE COURT: That would probably be better if I  
9 hadn't mentioned it, but I did, and --

10 MR. DICKSON: I say now we need to finish it up.

11 THE COURT: I think if the polygraph was not -- I  
12 think we could tell them that, you agree to it.

13 MR. WILLIAMS: I think the best way to deal with  
14 it -- I think the best way to deal with it is not to continue  
15 mentioning but to instruct the jury to disregard it and  
16 strike any reference to it.

17 THE COURT: Well, I think the defendant is probably  
18 entitled to a charge that -- since it's been brought up --  
19 and of course the agreement is in evidence, it's in there.  
20 Nobody objected to it when they offered the agreement.

21 MR. WILLIAMS: I don't know that we admitted it  
22 yet.

23 MR. KLUMB: We did.

24 MR. WILLIAMS: I would ask that we redact that  
25 portion.

1 THE COURT: It wasn't redacted.

2 MR. WILLIAMS: Well --

3 MS. PARHAM: Obviously make the redaction before it  
4 was published. That's why I didn't publish the second page.

5 THE COURT: I've never seen it. But if no polygraph  
6 was ever given, I'll just instruct the jury to that.

7 MR. WILLIAMS: I would -- Judge, I just -- I guess  
8 to make a record, we would prefer that any reference to the  
9 polygraph just be redacted and the jury be instructed to  
10 disregard. I think that fixes the problem, rather than  
11 trying to add more to it.

12 THE COURT: I don't think we add more; I think we  
13 level the playing field.

14 MR. KLUMB: The question is does the defense have a  
15 preference whether to --

16 THE COURT: What you want to do is get the  
17 advantages of having that in there without --

18 MR. WILLIAMS: Judge --

19 THE COURT: -- giving the jury the --

20 MR. WILLIAMS: I think that there is case law that  
21 says it's reversible error in certain circumstances to  
22 mention polygraphs at all. That's what worries me. But if  
23 the defense is offering that exhibit knowing that, and they  
24 are inviting that and waiving that argument, if they want to  
25 invite that information --

1 THE COURT: Well, what we are trying to do is give  
2 both sides a fair trial, and the polygraph should not -- it  
3 doesn't have a thing to do with it. And the best thing to do  
4 is tell the jury the truth, to say it's in there and  
5 disregard it.

6 MR. WILLIAMS: As long as we are clear that the  
7 defense is offering -- as long as we are clear that the  
8 defense is arguing that. She's bringing that exhibit in.

9 MS. PARHAM: That's not true.

10 THE COURT: What you are trying to do is get the  
11 advantage of the polygraph. You want to use that.

12 MR. WILLIAMS: Judge, we never gave one.

13 THE COURT: Well, then let's admit it.

14 MR. WILLIAMS: I think --

15 THE COURT: You don't want to admit it because you  
16 want to hang it out there as a possibility that they will  
17 hang on it and think it was done and that's not fair. That's  
18 not right. That's not what we are going to do. I'm not  
19 declaring a mistrial. I'm going to charge the jury.

20 (In open court:)

21 THE COURT: I brought up the fact that in the  
22 agreement there was a provision concerning a polygraph. I  
23 had never seen the agreement. I assumed it was in there. It  
24 was introduced into evidence, the agreement, without any  
25 objection. But be that as it may, whether by introducing it

1 into evidence or not objecting to it when it was introduced,  
2 the parties agreed that it all comes in, including the  
3 provision about the polygraph.

4 Be that as it may, the truth of the matter is as  
5 admitted by the parties, no polygraph was ever given to this  
6 witness. And so the fact that it's in the report or in the  
7 proffer really doesn't make any difference. And so disregard  
8 it. I shouldn't have brought it out. Counsel advised me  
9 that they were getting ready to strike it out before they  
10 actually published the agreement, in spite of the fact that  
11 they had offered the entire agreement in.

12 But that's beside the point. The important point is  
13 that it has no place in this case. It was -- that right was  
14 never exercised. She was never given a polygraph, and so it  
15 has no place in this case, so disregard it.

16 You may proceed.

17 MS. PARHAM: Thank you, Your Honor.

18 Q. Dr. Woraratanadharm, did you contribute to multiple  
19 publications with Dr. Dong and GenPhar and the different  
20 agencies?

21 A. Yes.

22 Q. How many publications do you believe that you -- your  
23 name is on?

24 A. I don't remember.

25 Q. Okay. Before doing a publication, what steps would you

1 take for your contribution?

2 A. Um, depending on my role in the paper, but I would  
3 contribute some of the writing portions of it.

4 Q. All right. And did you read these before they were  
5 published to make sure you agreed with the science in them?

6 A. Yes.

7 MS. PARHAM: May I approach the witness, Your  
8 Honor?

9 Q. Let me show you Defendant's Exhibit 1. Do you recognize  
10 that?

11 A. Yes.

12 Q. Is that a publication that you participated in jointly?

13 A. Yes, it is.

14 Q. Defense Exhibit --

15 THE COURT: Yes, sir?

16 MR. KLUMB: I'll wait, Your Honor. I'm sorry.

17 Q. Defense Exhibit 2. Can you identify that?

18 A. Yes. It's another paper that I was an author on.

19 Q. Have you seen these before?

20 A. Yes, I have.

21 Q. And do these accurately represent the publications that  
22 they purport to be?

23 A. Yes.

24 Q. Defense Exhibit 5.

25 A. That's another paper.

1 Q. Defense Exhibit 6.

2 A. Yes.

3 Q. And Defense Exhibit 7.

4 A. Yes.

5 Q. Are these all of them or are there more?

6 A. I don't remember. It looks like all of them.

7 Q. All right.

8 MR. KLUMB: I object on relevance grounds.

9 THE COURT: Let me see them. I gather these are  
10 scientific articles that were put in?

11 MS. PARHAM: Yes, sir.

12 THE COURT: Published in scientific --

13 (Pause in proceedings.)

14 THE COURT: You know, it would probably take me the  
15 rest of the week to read these, and I don't know that I would  
16 understand them if I read them. What they are trying to show  
17 here is that these people were involved in a scientific  
18 endeavor and that they were writing articles published in  
19 scientifically-recognized publications, and that these are  
20 some representative samples of those articles.

21 Now, it seems to me that that does have some  
22 relevance. The defense can't be sure what the Government is  
23 going to prove, but I think that they have the right to prove  
24 that they were involved in a scientific endeavor.

25 Now, are there any particular articles in here that



1       you've -- have you read these?

2               MR. KLUMB:    I've reviewed them very briefly, some  
3       of them.

4               THE COURT:    So you haven't read them?

5               MR. KLUMB:    Correct.

6               THE COURT:    Because I was getting ready to ask you  
7       some questions about some specific articles that I read last  
8       night.  Any particular ones that concern you?

9               MR. KLUMB:    I did not, I don't believe, even look  
10      at the ones that had to do with Avian flu, Rift Valley fever  
11      or the other ones that have nothing to do with the vaccines  
12      that were grant supported --

13              THE COURT:    Okay.

14              MR. KLUMB:    -- Your Honor.

15              THE COURT:    You see, the problem I run into, I think  
16      as a general proposition, that you are entitled to show what  
17      the defendant was doing in the scientific community.  But by  
18      springing -- and I don't use that word in a mean way, but in  
19      a descriptive way -- five not lengthy, but small print  
20      documents on us, there may be something in here that has some  
21      bearing on this case and that we don't know about it.  And so  
22      basically by saying it's relevant -- I think it is -- and  
23      letting it in, um, in toto, it seems to me is taking a chance  
24      that there is something in here that you might not even know  
25      about, and the Government doesn't know about it, and I don't

1 know about that the jury is going to find out about when they  
2 get out there and start reading it. And then we realize, Oh,  
3 my goodness, that wasn't supposed to be in evidence.

4 So I think to the extent that these articles show in  
5 a general way that the defendant was participating in the  
6 scientific community by publishing articles involving his  
7 trade, that they are admissible. And that may mean that just  
8 the heading, like in this first one I have here it said: "A  
9 complex" -- I can't even pronounce the name -- "and in a  
10 virus vectored vaccine against Rift Valley fever virus  
11 protects mice against lethal infection in the presence of  
12 pre-existing vector immunity."

13 And I think if we publish that and show who  
14 contributed to that, I think that sets forth what you want.

15 MS. PARHAM: Yes, sir.

16 THE COURT: And we can do that in each of these.  
17 And then in the meantime, if there is something in these  
18 articles specifically that you think is relevant, then I can  
19 hear you on that. But just to have this whole thing thrown  
20 at me and try to say it's relevant, I can't say that now.  
21 And I'm not into buying a pig in a poke, so we'll just say  
22 that the heading -- you can see what I'm talking about -- the  
23 heading here at the top which shows the contributors, and  
24 it's a small italics saying down to the bold type that I  
25 think describes the article, just down here, the

1 contributors, the name of the article, and when it was  
2 published. And I think that gives the jury all they need to  
3 know.

4 And if you want to add anything to it, fine, but  
5 let's mark those in, the portions thereof -- the whole  
6 document can come in, but the only part that goes to the jury  
7 is the part -- the heading with the title of the article and  
8 the people that contributed to it, and the publication and  
9 when it was published. And then if it develops that some  
10 other part is relevant we can deal with that, okay?

11 MS. PARHAM: Yes, sir. Thank you.

12 THE COURT: Okay. Anything further of this witness?

13 MS. PARHAM: Yes. I would like to pull that place  
14 in the record. So I didn't know if we could take a short  
15 morning break, so I could pull that question that we talked  
16 about looking up earlier from the record of direct  
17 examination --

18 THE COURT: Okay.

19 MS. PARHAM: -- about the statement from my client,  
20 whether it was hearsay or not.

21 THE COURT: Okay. I'm not sure I know you want to  
22 do that. What do you mean you want to do that?

23 MS. PARHAM: Well, she couldn't remember what the  
24 question was on direct, and you -- if she couldn't remember,  
25 we were going to be able to pull the record to see what the

1 question and answer actually was.

2 THE COURT: You can do it at some break. I'm not  
3 going to do it while the jury is here.

4 MS. PARHAM: That's why I was asking -- I'm almost  
5 finished with my cross-examination but for that one question,  
6 so I didn't know if we were going to take a break any time  
7 soon.

8 THE COURT: We sure are. We are going to take one  
9 in a few minutes. But I don't know, the court reporter, she  
10 likes a take a break, too.

11 Anything further of this witness?

12 MS. PARHAM: Just that question, Your Honor.

13 THE COURT: Okay. Any redirect?

14 Excuse me. I'm sorry, Wells, I --

15 MR. DICKSON: That's all right. I don't think I'll  
16 be taking long.

17 THE COURT: I'm sorry, but I don't mean to suggest  
18 that what you have to say or have to offer in this case is  
19 unimportant. It is important and I want to hear you.

20 So you may proceed.

21 MR. DICKSON: Thank you, sir.

22 THE COURT: You know, as you can tell, in reviewing  
23 this evidence that I have total recall, and I can recall all  
24 of the evidence just 100 percent, which is pretty miraculous.  
25 And I'm always tempted to let jurors go away with that

1 thought, but there is more to it than that. Science plays a  
2 part. And it's really a remarkable science that's been  
3 developed over the last few years, and it's called realtime  
4 reporting.

5 And what this young lady does here, she's not only a  
6 qualified court reporter, she's applied herself and become  
7 knowledgeable about realtime court reporting. And so what  
8 she's done is the stenotype that she uses to take down the  
9 testimony, now she has built up a vocabulary in her computer  
10 and it has certain software with it she uses that when she  
11 hits a symbol there, it comes out on my computer in words.  
12 In other words, I can read it right here. It comes out on my  
13 computer in words. In other words, I -- and so what it does  
14 for the lawyers, if they use it -- and they have to pay for  
15 it to use it, I don't have to pay for it -- is what it does  
16 for me is it keeps me awake, but -- I'm awake anyway, but it  
17 gives me a chance to be a little more precise as to what  
18 exactly was said and that gives me the ability to rule a  
19 little more intelligently. It's a wonderful, wonderful  
20 addition. And of course we have some judges that write notes  
21 and love letters and all kind of stuff all day on the bench,  
22 and of course it helps them, too, but for us that pay  
23 attention, it just doubles your attention and gives you the  
24 opportunity to know better what's going on.

25 The first time -- and I'll let you go -- the first

1 time I ever saw it was in Florence, I was holding court  
2 there, and they didn't have it up here, but they had it down  
3 there, where the court reporter, it was on her computer, and  
4 I made a ruling on the hearsay. And I said objection  
5 overruled, or sustained, whatever it was. And when I did  
6 that, I looked down and I saw her computer and I said, you  
7 know, technical science just overruled. I made a mistake and  
8 I could see what actually was said and could rule on that as  
9 opposed to what my ears had heard, which was a mistake.

10 But anyway, that's where I get my total recall. I  
11 think you probably figured it out, but just in case you  
12 hadn't.

13 Okay. Mr. Dickson, I've taken up your time, sir.  
14 You can go on.

15 MR. DICKSON: Won't take but a moment, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. DICKSON:

18 Q. May I just call you Dr. Jan?

19 A. That's fine.

20 Q. Thank you very much.

21 It's my understanding that you were the Operations  
22 Manager at GenPhar when you were working there; is that fair?

23 A. Yes.

24 Q. Okay. And you were also doing non-grant-related  
25 management work?

1 A. I was doing, yeah, other work besides.

2 Q. Tell me what other work you were doing.

3 A. I was working on the regulatory written pieces.

4 Q. I'm going to have to explain why I'm asking these. Where  
5 I was sitting over there, you have the water carafe right in  
6 the way and I was having trouble hearing you. So I'm going  
7 back through a couple of things that you may have already  
8 been asked that I wasn't clear.

9 A. Okay.

10 Q. Okay? GenPhar was in two different locations -- has been  
11 in two different locations in Mount Pleasant, both places --

12 A. Yes.

13 Q. -- is that correct?

14 A. Yes, that's correct.

15 Q. Okay. The first location they moved out of. And they  
16 moved into the second location, which these photographs that  
17 you identified earlier represent?

18 A. That's correct.

19 Q. It's my understanding that the address for that is 600  
20 Seacoast Highway?

21 A. Yes.

22 Q. Does that sound right to you?

23 A. That sounds right.

24 Q. Okay. And that's -- you come off the -- exit at the Long  
25 Point Road exit in Mount Pleasant, right?

1 A. Yes.

2 Q. You've got Belle Hall Shopping Center on the right. Do  
3 you remember the shopping center on the right?

4 A. I don't remember the name.

5 Q. You don't remember that? Okay. But anyway, it's in that  
6 general area?

7 A. Yes.

8 Q. Okay. Also while you were there, there was some  
9 construction going on on a new facility?

10 A. Yes.

11 Q. You testified about that yesterday?

12 A. Yes.

13 Q. Okay. Did you ever go to the new facility?

14 A. I did.

15 Q. Okay. I've got some photographs I want you to look at  
16 and tell me whether or not you can identify them, okay?

17 A. Okay.

18 MR. DICKSON: Before I do that, I'm going to make  
19 sure that the Government has seen them.

20 MR. KLUMB: Thank you.

21 MR. DICKSON: I'll pass them up to His Honor and let  
22 him look at them and see if he thinks anything is improper.

23 THE COURT: I don't care. Show them to the other  
24 side.

25 Q. Look at those and tell me whether or not you recognize



1 those six photographs, please, ma'am.

2 A. Yes, I recognize them.

3 Q. And what -- they are the photographs of what?

4 A. They are the new facility that was being built.

5 Q. Okay. Does that look -- does that look like it did the  
6 last time you saw it? In other words, do those photographs  
7 fairly and accurately represent what you said you saw?

8 A. Yes.

9 Q. Okay.

10 MR. DICKSON: Thank you.

11 THE COURT: And when was that?

12 THE WITNESS: Um, when I saw the building? Probably  
13 the last time was sometime in 2009.

14 THE COURT: 2009?

15 THE WITNESS: Um-hum.

16 THE COURT: Any objection?

17 MR. KLUMB: None, Your Honor.

18 THE COURT: Without objection.

19 MR. DICKSON: I need to put numbers on them.

20 Your Honor, at this time I would move Defense  
21 Exhibits 51 -- 50, 51, 52 and 53 into evidence.

22 THE COURT: Without objection.

23 (Thereupon, Defendant's Exhibit Numbers 50-53 were  
24 received in evidence.)

25 MR. DICKSON: Thank you, sir.

1 Bear with me for just a moment.

2 Q. I'm going to try it this way: You said that this is the  
3 way the building looked in 2009, the last time that you saw  
4 it?

5 A. Yes.

6 Q. Okay. Are you aware that construction stopped about 2009  
7 or 2010?

8 A. I was aware that construction stopped; I didn't know  
9 when.

10 Q. Okay. But this Exhibit 50 looks like it -- reminds --  
11 looks like it did when you last saw it?

12 A. Yes, I believe so.

13 Q. Okay. Another side. Would -- is your testimony the same  
14 on these two?

15 A. Yes.

16 Q. Okay. Are you looking at them or have you already looked  
17 at them?

18 A. Yes.

19 Q. All right. Thank you.

20 This is the front of the building, I understand. Is  
21 that your recollection?

22 A. Yes, that's my recollection.

23 Q. Okay.

24 Q. Your testimony is the same --

25 A. Yes.

1 Q. -- the way -- okay.

2 And another view from the back?

3 A. Yes.

4 Q. Okay. And that little centerpiece there, that's the main  
5 entrance at the back, isn't it? The main entry, the main  
6 back entrance? There is a main entrance of the building in  
7 front?

8 A. I think that's correct.

9 Q. Okay. All right. Do you know how much of the interior  
10 work was completed?

11 A. I do not know. I know that floors were installed, but I  
12 don't remember anything beyond that.

13 Q. Floors were installed. Do you know anything else?

14 A. No.

15 Q. Okay. Now, did I understand you correctly to say that  
16 you were aware that there were individual investors in  
17 GenPhar?

18 A. Yes.

19 Q. Okay. And do you have any recollection of how many over  
20 the period of time that you were there?

21 A. I only recall at least one of them.

22 Q. Were you aware that there were more than a hundred?

23 A. No.

24 Q. Okay. And you don't have any knowledge of how many --  
25 how much money they actually contributed, is what I

1 understood you to say? Is that correct?

2 A. That's correct. I don't know how much they contributed.

3 MR. DICKSON: Bear with me just one moment, Your  
4 Honor.

5 (Pause in proceedings.)

6 MR. DICKSON: That's all I have.

7 THE COURT: Anything, Ms. Parham?

8 MS. PARHAM: Just that one question with the  
9 record.

10 THE COURT: Anything from the Government?

11 MR. KLUMB: Yes, Your Honor. Thank you.

12 REDIRECT-EXAMINATION

13 BY MR. KLUMB:

14 Q. You indicated to Ms. Parham that GenPhar was using the  
15 Adenovirus platform to deliver the vaccine.

16 A. Yes, that's right.

17 Q. What is the single biggest obstacle to the effectiveness  
18 of using that particular platform to administer the vaccines  
19 that you were working on?

20 A. Um, the single biggest obstacle was there was a concern  
21 for pre-existing immunity to Adeno.

22 Q. And what does that mean?

23 A. That means that -- so the way the vaccines work is  
24 usually you get injected with maybe a killed version of a  
25 virus or a weakened version. And because you've seen -- your

1 immune system has seen that pathogen, the next time you  
2 actually are exposed to the real thing your body is able to  
3 mount an immune response very quickly. And that's what --  
4 that's how the vaccine protects you from the real pathogen.

5 So for the -- for the Adenovirus-based vaccines,  
6 because it is based on a virus that a lot of people have been  
7 exposed to, even, you know, when you were, you know, a young  
8 child, you know, by the age of five I think most people have  
9 been exposed to Adenovirus. So there is a concern that if  
10 you receive this vaccine that your immune response may then  
11 prevent the vaccine from actually working because it's  
12 recognizing the Adenovirus portion of it.

13 Q. And are you aware whether or not the Adenovirus platform  
14 has been successfully tested in human beings and been able to  
15 overcome that pre-existing immunity issue?

16 A. Um, I am aware of a cancer-based approach -- a cancer  
17 approach using Adenovirus that was able to overcome the  
18 pre-existing immunity.

19 Q. And what cancer was that? Do you remember?

20 A. I remember the gene that they used, but I don't remember  
21 which cancer.

22 Q. And for E-Bola and Marburg?

23 A. I -- I have to remember the literature. I know that  
24 they, the NIH, had an Adenovirus -- Adenovirus-based E-Bola  
25 vaccine that they have tested in monkeys, I think.

1 Q. My question was humans.

2 A. Huh?

3 Q. My question was humans.

4 A. Yeah. I don't remember if they had gotten into humans  
5 yet.

6 Q. Okay. Now, you discussed, I think, statements that you  
7 made to investigators back in January of 2010. And we'll go  
8 over that very briefly in just a second. But first of all,  
9 in a grant application, when you have that spreadsheet of  
10 personnel, is that a projection or a part of time actually  
11 spent?

12 A. In a grant application, that's a projection.

13 Q. Is there another document where there is a similar table  
14 that represents time actually spent as reported to the  
15 Government?

16 A. That's the In the Progress report.

17 Q. When you said in 2010 to agents that you didn't feel that  
18 the table was intentionally false, were you referring to the  
19 projection in the application or the actual statement in the  
20 progress reports? And if you need to refresh your  
21 recollection, I'll do so.

22 A. I think I was talking about the projection.

23 MR. KLUMB: Thank you, Your Honor. That's all I  
24 have.

25 THE COURT: Okay. Ladies and gentlemen, it's a

1 little bit, 20 minutes to 12. Let's take about a 15-minute  
2 recess.

3 (Thereupon, the jury retired from the courtroom.)

4 THE COURT: All right, Ms. Parham. I asked you if  
5 you had any further questions of this witness, and you said  
6 just one question. Now, I know there is one matter you want  
7 to go into, but I didn't realize there was another question  
8 of this witness. I thought you wanted to go back and look at  
9 the record of her direct testimony and see if she made a  
10 statement there. She's already said she doesn't remember  
11 what she said, or I think the last thing she said, I think  
12 the question was different.

13 MS. PARHAM: My recollection is he asked it on  
14 direct examination.

15 THE COURT: Well, you have to go back and look at  
16 the record. I don't know what you are going to ask her about  
17 it.

18 MS. PARHAM: Well, Your Honor's ruling was that if  
19 he asked it on direct, then -- I'm not offering in my own  
20 client's hearsay statements -- but if he asked it on direct,  
21 it's fair game because it's a statement of a party opponent.  
22 And he's opened the door and I believe that the record is  
23 going to show --

24 THE COURT: I just have to see what took place  
25 before. How many doors were swinging open and how many

1 weren't, I don't know. I mean, you know, the opening doors  
2 is a word that's used a lot more than it needs to be used.  
3 You just have to look back at the record, see what it is and  
4 make your case.

5 But I don't know why you need to ask her any  
6 additional questions because she's either -- the Government's  
7 not going back into it. They are not bringing it out again.  
8 And so the only way you are going to get advantage of it --  
9 get the advantage of it is if they asked her originally. And  
10 then the 801 takes place, as I've explained it, though you  
11 haven't addressed that yet. So there may be some  
12 disagreement with what I said. But I can't do anything, even  
13 with this total recall I have, until I find out what the  
14 question was and what the answer was, and maybe even what the  
15 context was.

16 And so I'm sure the court reporter will work with  
17 you --

18 MS. PARHAM: Yes, sir.

19 THE COURT: -- in any way she can, but I don't know  
20 what this witness is going to be able to help you with.  
21 She's already said she doesn't remember what she told them.  
22 And then the last thing she said, which wasn't followed up by  
23 anybody, if I recall correctly, I think it was a different  
24 question. I believe the record will reflect that that's  
25 almost a direct quote. Okay. We'll be in recess for 15



1 minutes.

2 (Thereupon, there was a brief recess.)

3 THE COURT: We got a question from one of the  
4 jurors. I got it from the CSO and he gave it to us. It's  
5 not signed. Usually, as I mentioned earlier, we get the  
6 questions from the foreperson. In this case we haven't  
7 appointed a foreperson yet, so obviously they can't give us  
8 the question. I made a copy for you.

9 "Page 2 of the proffer statement has been admitted  
10 into evidence; however, we have been advised to not consider  
11 it. Should we not consider it insofar as it did constitute a  
12 potential challenge in the future to any information  
13 disclosed to the Government?"

14 Anybody understands -- anybody understands that  
15 question, please stand on their head. I haven't -- I haven't  
16 seen the proffer agreement. I gather more than just page 2  
17 has been admitted, hadn't it?

18 MR. DICKSON: The whole thing.

19 MR. KLUMB: Yes. And I don't remember Your Honor's  
20 advising them not to consider it.

21 THE COURT: No. The only thing I talked about was  
22 the polygraph test. That's the only thing I mentioned.

23 MR. KLUMB: And I would interpret the question,  
24 Should we not consider it in so far as it constitutes a  
25 potential challenge in the future. They are talking about a

1 potential challenge involving the witness, not --

2 THE COURT: I don't think this is important to deal  
3 with right now. I think this is -- we can deal with this at  
4 lunch, we can deal with it this afternoon, we can deal with  
5 it tomorrow. So why don't you look at it and see what you  
6 come up with. It's kind of confusing, I think.

7 And you know, sometimes I'm sitting here and jurors  
8 are coming up and talking to the clerk after jury selection  
9 and they are asking them questions and things like that, and  
10 I'm working, but I'm listening, too, out of one ear. And you  
11 kind of hear jurors come up and you say, Oh, my goodness, he  
12 or she is going to be a problem. And so I think I can  
13 probably put my finger on who is asking these questions and I  
14 think it was predictable, you know.

15 Okay. You can bring them out.

16 MS. PARHAM: May I ask how you want to proceed  
17 with -- I pulled the record. May I read it to you to see  
18 how --

19 THE COURT: Let me see the record when you get it  
20 and then we can talk about it. Bring the jury out.

21 I think she's through, isn't she?

22 MS. PARHAM: This question.

23 THE COURT: Say what?

24 MS. PARHAM: No, sir. This question has to do with  
25 her. You were going to read this record and tell us how we

1 could proceed. This --

2 THE COURT: Sit down.

3 Have you given the Government a copy of it?

4 MS. PARHAM: Yes, sir.

5 THE COURT: Okay. Do I have a copy?

6 MS. PARHAM: I just wrote it out. We read it  
7 together. She's not able to print it, so I wrote it out.

8 THE COURT: Okay. I know we've got copy machines.  
9 You can copy stuff you write just like anything else.

10 MS. PARHAM: I don't have one here at this desk.

11 THE COURT: Well, I do.

12 Do you have any objection to what she wants to do?

13 MR. KLUMB: No, Your Honor.

14 THE COURT: Okay. I don't need a copy.

15 (Thereupon, the jury returned to the courtroom.)

16 THE COURT: Okay. I understand you have another  
17 question of this witness. You can sit down. I remind you  
18 you are still under oath. Go ahead.

19 MS. PARHAM: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. PARHAM:

22 Q. Do you recall being asked yesterday:

23 "Did you ever discuss the subject with anyone at  
24 GenPhar?"

25 "Answer. Yes."

1 "Do you remember who?"

2 "Dr. Dong discussed it with me once.

3 "Question. And can you tell us about that  
4 conversation, what he said and how it came up?"

5 And do you recall your answer being: "Um, well, the  
6 company had been visited by the FBI regarding this -- the  
7 subject of this case. And so after I had a conversation with  
8 Dr. Dong where he approached me and was basically, you know,  
9 trying to say, you know, Aren't we supposed to -- Aren't we  
10 able to use indirect costs for buildings and renovations and  
11 things like that? And I just didn't really say anything. I  
12 didn't agree with him."

13 "Question. Did you disagree?"

14 "Answer. I didn't say anything either way."

15 Do you recall that being said yesterday during your  
16 direct examination?

17 A. Yes.

18 MS. PARHAM: That's all I have.

19 THE COURT: My understanding is that they've gone  
20 back and looked at the record, and with the assistance of the  
21 court reporter, they have gotten that portion of the record  
22 and written it down and she was verbatim reading from it. Is  
23 that not correct?

24 MS. PARHAM: Yes, sir.

25 MR. KLUMB: That's correct.

1 THE COURT: Any further questions of this witness by  
2 anybody?

3 MS. PARHAM: No, sir.

4 MR. KLUMB: No, sir.

5 THE COURT: Okay. Wait a minute. Mr. Dickson?

6 MR. DICKSON: No, sir.

7 THE COURT: Thank you very much. You are excused.

8 \*\*\*\*\*

9  
10 I certify that the foregoing is a correct transcript from the  
11 record of proceedings in the above-titled matter.  
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13  
14

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16  
17 Amy C. Diaz, RPR, CRR

November 24, 2014

18 S/ Amy Diaz  
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